WP(C) 1779/2007
BEFORE
THE HON'BLE MR. JUSTICE B.K.SHARMA
JUDGMENT AND ORDER (ORAL)

Heard Mr. M. Bhuyan, learned counsel for the petitioners along with Mr. M. Choudhury, learned advocate. Also heard Mr. P.K. Mushahary, learned Sr. Govr nment Advocate, assisted by Ms R, Chakraborty, learned State counsel appearing f or the respondents.

2. The matter has been heard at length at the motion stage itself. Learned State counsel has also produced the records relating to the impugned W.T. Mess age dated 1.3.2007 (Annexure-16 to the writ petition) and I have gone through th e same. I propose to dispose of the matter at the motion stage itself after cons idering the materials on record and the submissions made by the learned counsel for the parties.

3. The petitioner No.1 is the association of the Extension Officers working in Panchayat and Rural Development Department. The petitioners No.3, 4 and 5 a re the Extension Officers. While the petitioners No.3 and 4 are in the Panchayat Wing of the department, the petitioner No.5 is in the Women & Children Wing of the department. The petitioners No.3, 4 and 5, while working as the Extension Officers, are also holding the charge of the posts of Block Development Officer (B.D.O.) in the respective blocks. Their grievance is in respect of the Annexur e-16 W.T. Message dated 1.3.2007 by which the authorities have been directed by the Commissioner and Secretary to the Government of Assam in the Panchayat and Rural Development Department to allow the Extra Assistant Commissioners/Circle O fficers and other officers of equivalent rank for holding the charge of the bloc ks, where regular Development Officers have not been posted. By the said W.T. M essage, a further direction has been issued to withdraw the charge of B.D.Os fro m the Extension Officers, who have been shouldering the responsibilities of the posts of B.D.O in addition to their normal duties.

4. Wayback in 1979, the Government of Assam in the then Panchayat and Commu nity Development Department, now re-designated as Panchayat and Rural Developmen t Department, issued direction by letter dated 30.10.1979 (Annexure-1 to the wri t petition) to allow the Extension Officers ((Panchayat) and (Women & Children) to hold the temporary charge of B.D.O. in absence of regular B.D.Os. It is subm itted by the learned counsel for the petitioners that the said communication da ted 30.10.1979 is still in existence and has not been withdrawn.

5. It appears that there is no Service Rule governing the service conditio ns of the departmental officers including the Extension Officers. However, ther e is an Executive Order issued under No.PDB.96/Pt.II/20 dated 2nd June, 1990 (An nexure-2 to the writ petition). As per the said Service Order, a quota has been fixed for promotion of the Extension Officers to the rank of B.D.Os. The Servic e Order was put to challenge by the Extension Officers of another wing namely, C redit. The writ petition filed by the Extension Officers (C) was registered and numbered as Civil Rule No.4213/1995. The writ petition was disposed of by jud gment and order dated 18.9.1998 quashing the said Service Order dated 2.6.1990. A direction was issued for faming of Service Rules under the provisions of Artic le 309 of the Constitution of India. A further direction was issued for integr ation of different wings of Extension Officers into a common cadre and thereafte r, to prepare an integrated seniority list in accordance with law.

6. The above judgment and order was carried on appeal by way of a writ appeal be ing W.A. No.425/1999. The writ appeal was allowed with the following observatio ns :-

Para 6 : In the aforesaid facts and circumstances the directions by the learned Single Judge that there should be a combined Seniority List of all the Extensi

on Officers cannot hold good. There cannot be combined Seniority List of unequ als. The seniority list is always drawn primarily for the purpose of promotion in the next rank. The amalgamation of the two cadres was only for the admini strative purpose keeping the identity of each cadre distinct and separate. In th is view of the matter, we are of the opinion that the directions given by the le arned Single Judge that there should be a combined Seniority List and then the p romotions should be in accordance with the combined Seniority List on merit-cum- seniority basks, are liable to be quashed. We order accordingly. Subject to the observations made above, this Writ Appeal is allowed to the aforesaid extent.

Para 7 : As a matter of abundant caution, we may observe that if all the categor ies are made equal in view of the aforesaid observations, there cannot be any b ar to the official respondents to keep separate quote for the posts of B.D.O. f or the separate categories of Extension Officers.

7. It is an admitted position that the department has not finalized any Ser vice Rules governing the service conditions of the departmental authorities as y et. It is submitted that the Service Rule is still at the draft stage. It appea rs that the draft rule has been put to challenge by the Extension Officers of th e Credit Wing by filing the writ petition being W.P. (C) No.8726/2004 and by ord er dated 1.12.2004 passed in the said writ petition, it has been provided that n o promotion to the vacant posts of B.D.O. should be made. In the said writ pet ition, the State of Assam in the Panchayat and Rural development Department file d Misc. Case No.165/2005 praying for vacating the stay order passed on 1.12.2004 . It is submitted that the stay order so passed, has not been vacated. In the ap plication filed by the department, it is the stand of the department that the pr ocess for conferring the gazetted status to the Extension Officers in the Pancha yat and Women & Children Wing is under process. In paragraph 9 of the applicatio n, countering the stand of the Extension Officers in the Credit Wing that the en tire quota for promotion should be reserved for that particular wing, it has be en stated that the reservation of the entire quote of promotion for the Extensio n Officers (C) will adversely affect the promotional prospects of the Extension Officers (Panchayat) and (Women & Children). The instances of filling up the vac ant post of B.D.O., by way of promotion from amongst the Extension Officers (Pan chayat) and (Women & Children) have also been indicated.

8. Thus, from the aforesaid stand of the department, what has emerged is th at the process for conferring the gazetted status to the Extension Officers of t he said Panchayat and Women & Children Wing is under process and that the depart ment is not opposing to the promotion of such officers to the rank of B.D.Os.

9. Annexure-14 is the judgment and order dated 13.3.2001 passed in the writ petition being W.P. (C) No.6718/2000. That was a case pertaining to transfer and posting of the B.D.Os and Sr. B.D.Os. The writ petitioner was a B.D.O. work ing in the department while the Respondent No.5 was an ACS officer working as C ircle Officer. By order dated 22.11.2000, he was allowed to hold additional cha rge of Senior B.D.O. of the block in addition to own duties vice In-charge B.D.O ., relieved of his charge. In the judgment, the following observation has been m ade :-

8. Having said so that the notification dated 29.11.2000 allowing the 5th R espondent as Circle Officer of the area to hold additional charge of Senior BDO has been issued against the public interest and contrary to the official communi cation is well demonstrated in the letters dated 19.11.1999 and dated 14.01.2000 written by the Commissioner & Secretary to the Govt. of Assam, Revenue Departme nt and Secretary to the Govt. of Assam, Personnel (A) Department respectively (A nnexures-6 & 7 to the writ petition). In the letter dated 19.11.99 written by t he Commissioner & Secretary to the Govt. of Assam, Revenue Department addressed to the Chief Secretary to the Govt. of Assam pointed out that the practice allow ing Circle Officers to hold the charge of Senior Block Development Officer cons ume much time of the officer and the officers have been left with less time for

devoting their official work related to revenue works including realization of r evenue and realization of Bakijai fund in Bakijai Proceesings. In the letter it is requested that necessary instruction be issued to all Deputy Commissioner no t to allow the Revenue Circle Officers to function as Senior B.D.O.

9. There is also another letter dated 14.01.2000 written by the Secretary t o the Govt. of Assam addressed to the Commissioner and Secretary, Panchayat and Rural Development Department depreciating the practice of allowing Revenue Circl e Officers holding charge of Senior Block Development Officer in addition to the normal duties. The letter suggest that considering the work allotted for revenu e collection and Bakijai realization, the practice of allowing revenue Circle Of ficers to hold the additional charge of Senior Block Development Officer be disc ontinued. By the aforesaid letter the Commissioner and Secretary, Rural Adminis tration Department was requested to consult the Personnel Department while prop osing to give additional duties to ACS Officers. The said letter speaks of appr oval of the Chief Secretary to the Govt. of Assam.

10. In spite of the aforesaid correspondences at the level of Commissioner a nd Secretary, the practice of allowing the Revenue Circle Officers to hold the additional charge of Senior BDO has been continuing unabated against public inte rest. It has been highlighted in the aforesaid two letters that when the Revenue Circle Officer is allowed to hold additional charge of Senior BDO much time ha s been consumed by the officers functioning as BDO and less time is left with th e officer to execute his own entrusted duties in collection of revenue and reali zation of fine etc. in Bakijai proceedings. Such arrangement is detrimental to public interest has been highlighted in the above said two letters. It is a cle ar case of public interest pitted against the individual interest and former mus t prevail over the latter.

10. It is submitted that the above judgment has attained its finality. On pe rusal of the observations made in the said judgment, what has transpired is tha t, allowing the ACS officers to hold the additional charge of B.D.O. and Sr. B.D.O. was deprecated. However, from Annexure-15 communication dated 18.10.2006 , it is seen that in spite of the above observations made by this Court, the dep artmental authorities have posted the ACS officers as B.D.Os in the department. The impugned WT Message dated 1.3.2007 is also to the same effect.

11. It is the case of the petitioners that they are stagnating in the presen t positions without any promotion. In spite of the orders passed by this Court, the Service Rule is yet to be finalized by the department. On the other hand, t he draft rule which has been prepared, is under challenge and presently, a stay order is operating filling up of the posts of B.D.Os.

12. The petitioners are in the substantive grade of Extension Officers (Pan chayat) and (Women & Children) and they have not been considered for promotion t o the posts of BDO. According to them, there is nothing wrong, if they are allo wed to hold the charge of B.D.O. in absence of any regular B.D.O. According to t hem, the decision of the departmental authorities to allow the ACS officers to hold the charge of the posts of BDO is only to favour them and that too, in vio lation of the clear cut directions of this Court, about which mention has been m ade above.

13. Mr. M. Bhuyan, learned counsel for the petitioners submits that the enti re exercise towards issuance of the W.T. Message dated 1.3.2007 (Annexure-16 to the writ petition) is a ploy to deprive the departmental officers both from pr omotion as well as holding the charge of the promotional posts of B.D.O. He subm its that the departmental authorities cannot deprive the petitioner of being pro moted and even from holding the charge of the promotional posts of BDO.

14. Countering the above argument, Mr. P.K. Mushahary, learned Sr. Govt. Adv

ocate, in reference to the records produced and the stand in the affidavit-in-opposition, submits that the decision has been taken for smooth functioning of the department and towards implementation of various schemes. He submits that in fact, some posts of B.D.O. are earmarked for A.C.S. officers. In this connection, he has referred to the chart appended to the note in the file justifying posting of the ACS officers as B.D.Os. On perusal of the chart, what has transpired, is that certain posts of B.D.Os have been earmarked for the ACS officers. Certain posts have also been earmarked for the departmental officers. Although in the note, justifying posting of the ACS officers as B.D.Os, a mention has also been about the Service Rule, but in view of the admission made by the learned counsel for the parties, there is no Service Rule. It is not understood as to which Service Rule has been referred to in the note. In the same very note, a mention has been made about the draft Service Rule. As per the note, sufficient numbers of ACS and departmental officers are available for promotion as full-fledged B.D.O. But in the impugned WT Message, a request for engaging the E.A.Cs/Circle Officers and other officers of equivalent rank for holding the charge of B.D.O. has been made. Thus, the ACS officers and the Circle Officers and the officers of equivalent rank are only to be posted B.D.Os. Mr. Mushahary, learned Sr. Govt. Advocate submits that such arrangement has been made temporarily until regular posting of B.D.O. is made.

15. As noted above, this Court has passed the interim order dated 1.12.2004 in WP (C) No.8726/2004 directing that no promotion to the vacant post of B.D.O. either by direct recruitment or by promotion or by deputation should be made. If the ACS officers are posted as B.D.Os, on what basis they would be so posted, has not been clarified. Annexure-15 notification dated 18.10.2006 by which certain ACS officers have been posted, would go to show that their services have been placed at the disposal of the Panchayat and Rural Development Department, meaning thereby, that they have been posted so on deputation. If that be so, the decision in the WT Message to post of the ACS officers as B.D.O. would be in violation of the interim order passed on 1.12.2004 in WP (C) No.8726/2004. Such posting of ACS officers as B.D.O. will also be against the observations made by this Court in the judgment and order dated 13.3.2001 passed in WP (C) No.6718/2000, about which a mention has been made.

16. All the above aspects of the matter will have to be considered by the departmental authorities before implementing the WT Message dated 1.3.2007. In this connection, Mr. Bhuyan, learned counsel for the petitioners has referred to the representation dated 13.3.2007 (Annexure-19 to the writ petition) submitted by the petitioner No.1 to the Commissioner and Secretary to the Government of Assam, Panchayat and Rural Development Department. The said Commissioner may also take on record the said representation towards taking a fresh decision in the matter. At this stage, Mr. PK Mushahary, learned Senior State counsel has referred to the Annexure-13 minutes of discussions dated 6.10.2005. He has also referred to the provisions of the National Rural Employment Guarantee Act, 2005. He submits that as per Section 15 of the said Act, no Extension Officer can be posted as B.D.O. Mr. M. Bhuyan, learned counsel for the petitioners disputes the same. He submits that the Act has nothing to do with the arrangement by the impugned WT Message.

17. A further submission has been made by Mr. PK Mushahary, learned Sr. Govt. Advocate that since the petitioners are not the Gazetted officers, they cannot be posted as Block Development Officer. As per own admission of the respondents in Misc. Case No,.1652/2005 filed in WP (C) No.8726/2004 in which a stay order is operating, the Government has decided to confer Gazetted status to the Extension Officers (Panchayat) and (Women & Children) and the process is on. If there is delay on the part of the departmental authorities towards implementation of the same, I am of the considered opinion that they cannot be put forward the same as a ground not to allow the petitioners to hold the charge of B.D.O.

18. Writ petition is disposed of directing the Commissioner and Secretary to the Government of Assam in the Panchayat and Rural Development Department to consider the above aspects of the matter and then, to pass a speaking order, as expeditiously as possible. Till disposal of the matter by passing a speaking order. Status quo as on today in respect of the impugned WT Message dated 1.3.2007 shall be maintained. It is further provided that the copy of the speaking order to be passed shall be furnished to the petitioners.

19. With the above observations and direction, the writ petition is disposed of. There shall be no order as to costs.